

IN THE CLAIMS:

Please amend Claims 1, 8 and 14-19 to read as follows. A marked-up copy of these claims, showing the changes made thereto, is attached.

C<sup>1</sup> 1. (Twice Amended) An isolated polynucleotide comprising a coding sequence consisting of the nucleotide sequence of SEQ ID NO: 21.

C<sup>2</sup> 8. (Twice Amended) An isolated polynucleotide comprising a coding sequence consisting of the cDNA insert of clone er311\_20 deposited under accession number ATCC 98781.

C<sup>3</sup> 14. (Amended) An isolated polynucleotide comprising a coding sequence consisting of the nucleotide sequence of SEQ ID NO:21 from nucleotide 8 to nucleotide 2008.

15. (Amended) An isolated polynucleotide coding sequence that encodes a protein consisting of the amino acid sequence of SEQ ID NO:22.

16. (Amended) An isolated polynucleotide that hybridizes under conditions at least as stringent as 1X SSC at 65 degrees C, or 1X SSC at 42 degrees C with 50% formamide, followed by washing in 0.3X SSC at 65 degrees C, to a complement of the polynucleotide of claim 1, wherein said polynucleotide encodes a polypeptide having a kanadaplin activity.

17. (Amended) An isolated polynucleotide that hybridizes under conditions at least as stringent as 1X SSC at 67 degrees C, or 1X SSC at 45 degrees C with 50% formamide, followed by washing in 0.3X SSC at 67 degrees C, to a complement of the polynucleotide of claim 1, wherein said polynucleotide encodes a polypeptide having a kanadaplin activity.

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18. (Amended) An isolated polynucleotide having at least 90% sequence identity to the polynucleotide of claim 1, wherein said polynucleotide encodes a polypeptide having a kanadaplin activity.

19. (Amended) An isolated polynucleotide having at least 95% sequence identity to the polynucleotide of claim 1, wherein said polynucleotide encodes a polypeptide having a kanadaplin activity.

#### REMARKS

Claims 1, 8 and 14-19 have been amended in order to recite the present invention with the specificity required by statute. Accordingly, no new matter has been added.

Claims 1-5, 8 and 14-19 are rejected under 35 U.S.C. §101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well-established utility.

In support of the rejection, the Examiner states the proposed use of the polynucleotide relates to its encoded protein and notes that while Applicants believe such